

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter	:	Chapter 7
	:	Case No. 13-10864 [SHL]
-of-	:	
	:	
TYT EAST CORP.,	:	
	:	
Debtor.	:	
-----	X	
	:	
ALBERT TOGUT, Not Individually But	:	
Solely in His Capacity as Chapter 7	:	Adv. Proc. No. 13-01797 [SHL]
Trustee of the Estate of TYT East Corp.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
WON & HAR REALTY CORP. and	:	
DEAN K. FONG,	:	
	:	
Defendants.	:	
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**JOINT STIPULATION AND SCHEDULING ORDER**

Albert Togut, not individually, but solely in his capacity as the Chapter 7 trustee (the "Trustee") of TYT East Corp. (the "Debtor") in the above-captioned case and the plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding") , Won & Har Realty Corp. (the "Landlord"), and Dean K. Fong, Esq. ("Dean Fong," together with the Landlord, the "Defendants," and the Defendants together with the

Trustee, the "Parties"), hereby submit this joint stipulation and proposed scheduling order (the "Stipulation") for the Adversary Proceeding:

WHEREAS, on December 6, 2013, Trustee filed a Complaint (the "Complaint") to commence the Adversary Proceeding against the Defendants seeking, *inter alia*, the avoidance and return of an alleged \$1 million transfer (the "Transfer"); and

WHEREAS, on January 30, 2014, each of the Defendants answered the Complaint and asserted various defenses (the "Answers"); and

WHEREAS, the Court encouraged the Parties to meet in person to discuss potentially settling the Adversary Proceeding or, in the alternative, to attempt to agree on a discovery schedule; and

WHEREAS, on February 26, 2015, counsel to the Trustee, counsel to the Landlord, and the Landlord attended an in-person meeting to discuss a potential settlement of the Adversary Proceeding and, in the alternative, to attempt to agree on a discovery schedule;

WHEREAS, thereafter, the Parties have not yet reached a consensual resolution of the Adversary Proceeding; and

WHEREAS, the Parties conferred and agreed to a discovery schedule.

IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:

1. All parties shall exchange initial disclosures pursuant to Federal Rule of Bankruptcy Procedure 7026(a) by February 16, 2016 (the "Disclosures Due Date").
2. Discovery Plan.

- A. Discovery will be needed for the following subjects: the alleged transfers made by the Debtor to the Defendants; all elements in the Plaintiff's Complaint; and the defenses that are asserted in the Answers.
- B. All discovery requests must be served by March 11, 2016.
- C. All discovery responses shall be served by April 8, 2016.
- D. The party bearing the burden of proof on an issue for which an expert will be used shall designate its expert witness(es) by April 22, 2016; any rebuttal expert witness on such issues shall be designated by May 13, 2016.
- E. Reports from retained experts under Rule 26(a)(2) due: the parties will serve expert reports on issues on which the party bears the burden of proof by June 3, 2016; rebuttal reports will be served by July 1, 2016.
- F. Supplementations under Rule 26(e) are due in a timely fashion.

3. Discovery Disputes. In the event of dispute concerning discovery, the parties' counsel shall promptly confer to attempt in good faith to resolve the dispute. If, notwithstanding their good faith efforts to resolve a discovery dispute, they are unable to reach a resolution, they shall promptly inform the Court by letter of the nature of the dispute and request a telephonic discovery conference. At the conference, the Court will ask the parties about their prior efforts to resolve the dispute.

4. ADR. (A) Counsel to the Trustee and counsel to the Landlord agree to meet fact-to-face to discuss settlement or the use of alternative dispute resolution

("ADR") within fourteen days after the close of discovery. Counsel shall advise the Court promptly if they agree to use ADR to try to resolve some or all of the claims in the Adversary Proceeding. (B) The Trustee reserves all rights to seek that Dean Fong participate in ADR. The use of any ADR mechanism does not stay or modify any date in this Order unless the Court agrees on the application of any Party.

5. Dispositive Motions. All potentially dispositive motions shall be filed by September 30, 2016 (the "Dispositive Motion Deadline").

6. Trial.

A. The Adversary Proceeding should be ready for trial by 45 days after rulings on dispositive motions or, if no dispositive motions are filed, by 45 days after the Dispositive Motion Deadline.

B. Counsel shall submit a proposed Joint Pretrial Conference Order within thirty (30) days after rulings on dispositive motions or, if no dispositive motions are filed, by 30 days after the Dispositive Motion Deadline.

A. The trial is expected to take approximately 1 and a half trial days.

7. Other Agreed Upon Items.

A. The parties agree that this proceeding will be a bench trial in the Bankruptcy Court.

B. The parties agree that this is a core proceeding.

8. Service. Plaintiff's attorney shall serve copies of this Scheduling Order upon all parties to this adversary proceeding and upon any other parties entitled to notice within five (5) days after the date hereof.

9. Amendment of this Stipulation. The Parties can amend this order by stipulation and agreement by all Parties. In the event a Party requests an amendment that is not consensual, the Court will not amend it unless presented with good cause and timely application as soon as possible. FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN DISMISSAL OR OTHER SANCTION.

*[Concluded on Following Page]*

IN WITNESS WHEREOF, the parties below have executed this Stipulation as of the date hereof.

Dated: February 10, 2016  
New York, New York

TOGUT, SEGAL & SEGAL LLP  
*Attorneys for ALBERT TOGUT, Not Individually  
But Solely in His Capacity as Chapter 7 Trustee*

By: /s/Neil Berger  
NEIL BERGER  
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Dated: January 26, 2016  
Brooklyn, New York

ORTIZ & ORTIZ, LLP  
*Attorneys for Defendant Won & Har Realty Corp.*

By: /s/Norma E. Ortiz  
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Dated: February 9, 2016  
Brooklyn, New York

DOYAGA & SCHAEFER  
*Attorneys for Defendant Dean K. Fong*

By: /s/David J. Doyaga, Sr.  
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**“SO ORDERED”** on this 17 day of February, 2016  
in New York, New York.

/s/ Sean H. Lane  
HONORABLE SEAN H. LANE,  
UNITED STATES BANKRUPTCY JUDGE